

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer CA 16915.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Delay by the Bureau of Land Management in handling a noncompetitive oil and gas lease offer creates no right in the offeror to lease issuance on the terms which were available at the time the lease offer was made. When the land in a noncompetitive lease offer is included within a known geologic structure, the Secretary loses authority to lease except by competitive bid, and the noncompetitive offer must be rejected.

APPEARANCES: Eugen Dumitru Georgescu, Van Nuys, California, pro se; Lynn M. Cox, Esq., Office of the Solicitor, Pacific Southwest Region, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Eugen Dumitru Georgescu has appealed from a decision of the California State Office, Bureau of Land Management (BLM), rejecting his noncompetitive offer to lease acquired land in the S\ SW^ sec. 17, T. 9 S., R. 14 E., Mount Diablo Meridian, California, for oil and gas development. On August 21, 1987, appellant's offer to lease was rejected because the land was determined to be within the Chowchilla known geologic structure (KGS). The procedural background of this case prior to creation of the Chowchilla KGS is described by the August 21, 1987, decision:

On May 3, 1985, the subject lease offer was rejected by decision on the grounds that the lands under application were embraced in a terminated oil and gas lease and were available for leasing only after being listed and offered under the simultaneous leasing process pursuant to 43 CFR 3112. On May 15, 1985, the offeror filed a timely appeal of the rejection [sic] decision to the Interior Board of Land Appeals (IBLA). A further review of the official

records in this office revealed that the decision of May 3, 1985, was issued erroneously and as a result the decision was vacated by Order on May 27, 1986, and the official file was remanded back to this office for further processing.

(Decision at 1). It is this history of delay and error which is the single focus of appellant's statement of reasons for appeal.

Appellant does not argue with the regulatory requirement of 43 CFR 3100.3-1 that all lands determined to be within the boundaries of a KGS shall be leased competitively to the highest bidder. ^{1/} Nor does he challenge the technical determination made by the Department's geologists on July 27, 1987, which created the extension of the Chowchilla gas KGS affecting the tract he offered to lease. Rather, he argues that it is inequitable that BLM should be able to reject his offer even though the rejection of his offer is a direct result of delay caused by the agency itself.

[1] If, at any time prior to issuance of a lease to a noncompetitive offeror, it is determined that the land sought to be leased is within a KGS, the noncompetitive offer must be rejected. Evelyn D. Ruckstuhl, 91 IBLA 384 (1986); Evelyn D. Ruckstuhl, 85 IBLA 69 (1985). The Secretary has no authority to issue a noncompetitive lease to lands within a KGS. McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195 (1983). Rejection is required even in cases where, but for delay in lease issuance, it appears probable the noncompetitive lease would have issued. Marc W. Richman, 86 IBLA 143 (1985).

Rocky Mountain Exploration Co. v. Clark, Nos. 85-2560, 1220 (10th Cir., Oct. 26, 1987), concerned an appeal of an order by a district court requiring the Secretary to issue a noncompetitive lease to land which had been determined to be within a KGS during litigation over the adequacy of the lease offer. Reversing the district court, the court of appeals observed that:

Even though the [district] court thought it "unfair" that the Secretary collected evidence suggesting the parcel contained a known geological structure while litigating "over an obvious typographical error" equity cannot be employed in this instance. As we stated in [McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985)], a first qualified applicant is entitled to the lease only if the Secretary chooses to issue it. The investment of time and energy by a prospective lessee or years spent litigating a matter of uncertain merit by the government cannot be gainsaid, but they

^{1/} The Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-259 repealed the KGS provision codified at 30 U.S.C. § 226 (1982), which the Department's KGS regulations implemented prior to passage of the 1987 Act. Pending offers such as appellant's, however, were required to be acted upon under provision of the prior law.

do not turn the applicant's expectation of obtaining a lease into a vested right. Furthermore, first qualified applicants are not entitled to have a parcel classified as competitive or noncompetitive based on the information of geological structures available at the time of their lease offer. Rather, the Act, agency regulations, and judicial precedent require the Secretary to withdraw a parcel from noncompetitive bidding at any time before issuance of the lease if a potential oil or gas deposit is discovered. [Emphasis in original.]

Id., slip op. at 5. This same reasoning holds true here. Delay alone, even though it results in rejection of appellant's lease offer, cannot confer authority upon the Secretary to issue a noncompetitive lease to lands discovered to be within a KGS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge